

Illinois retail sales are made by persons who either accept purchase orders in the State or maintain an inventory in Illinois and fill Illinois orders from that inventory. The Illinois retailer is then liable for Retailers' Occupation Tax on gross receipts of sales and must collect the corresponding Use Tax incurred by purchasers. See 86 Ill. Adm. Code 130.605(a). (This is a GIL).

May 6, 1999

Dear Ms. Xxxxx:

This letter is in response to your letter dated March 15, 1999. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 86 Ill. Adm. Code 1200.120(b) and (c), enclosed.

In your letter, you have stated and made inquiry as follows:

COMPANY is a PRODUCT dealer with retail locations in Wisconsin, Illinois and Missouri. We also wholesale used PRODUCT and currently have warehouse locations in Wisconsin and Illinois. Our corporate headquarters is located in Wisconsin.

The retail operation transactions are generally kept within each respective state and we charge sales tax on those transactions. Occasionally, we will deliver across the border into a state where we are registered to collect and remit sales and/or use tax. The following list describes (3) possible occurrences of this type of sale.

1. Wisconsin retail sale delivered to Illinois

⇒ Customer enters the [WI] store and contracts to purchase PRODUCT to be delivered to a location over the border into Illinois in most cases using a vehicle obtained and operated by our company personnel. The terms of the sale can be prepayment, deposit w/balance due on delivery, or C.O.D. or invoiced.

⇒ Do we charge [WI] sales tax or [IL] use tax?

2. Illinois retail sale delivered to Wisconsin

⇒ Customer enters the [IL] store and contracts to purchase PRODUCT to be delivered to a location over the border into Wisconsin in most cases using a vehicle obtained and operated by our company personnel. The terms of the sale

May 6, 1999

can be prepayment, deposit w/balance due on delivery, or C.O.D. or invoiced.

⇒ Do we charge [IL] sales tax or [WI] use tax?

3. Missouri retail sale delivered to Illinois

⇒ Customer enters the [MO] store and contracts to purchase PRODUCT to be delivered to a location over the border into Illinois either using a vehicle obtained and operated by our company personnel, utilization of on outside delivery service or via common carrier. The terms of the sale can be prepayment, deposit w/balance due on delivery, or C.O.D. or invoiced.

⇒ Do we charge [MO] sales tax or [IL] use tax?

Additionally, we wholesale used PRODUCT. The sales office for wholesale operations is located in Wisconsin. Final acceptance of all contracts to purchase wholesale PRODUCT occurs within the State of Wisconsin. We wholesale these goods to customers located throughout the continental United States and Canada. We currently have distribution warehouses in Wisconsin and in Illinois. An order may be filled with combined inventory from both warehouses. All orders are prepaid or invoiced. Based on the following examples of shipping methods, to which state do we report the gross receipts for resale?

4. Inventory located in [WI] and shipped common carrier into [IL]?
5. Inventory located in [WI] and shipped our delivery into [IL]?
6. Inventory located in [WI] and shipped common carrier into [MO]?
7. Inventory located in [IL] and shipped our delivery into [WI]?
8. Inventory located in [IL] and shipped common carrier into [WI]?
9. Inventory located in [IL] and shipped our delivery into [MO]?
10. Combined load of inventory [WI & IL] delivered via common carrier to either [WI, IL or MO]? Note: the inventory may be either shipped from each respective state directly to the customer or the inventory may be combined into a shared trailer which will be delivered to the customer.
11. Combined load of inventory [WI & IL] delivered via common carrier to all other states? Note: the inventory may be either shipped from each respective state directly to the

May 6, 1999

customer or the inventory may be combined into a shared trailer which will be delivered to the customer.

Please help us to answer these questions applicable to your state so that we may have a clear understanding of reporting requirements for each state in which we are registered to collect and remit sales & use tax.

If you have any questions regarding this letter or need clarification of our terms of sale, please feel free to call me at ####.

Illinois retail sales are made by persons who either accept purchase orders in the State or maintain an inventory in Illinois and fill Illinois orders from that inventory. The Illinois retailer is then liable for Retailers' Occupation Tax on gross receipts of sales and must collect the corresponding Use Tax incurred by purchasers. See 86 Ill. Adm. Code 130.605(a), enclosed. However, if both the locations of the property being purchased and the purchase order acceptance were outside of the State of Illinois, then such sales would only be subject to Illinois Use Tax at the rate of 6.25%.

In general, the imposition of the various local sales taxes in Illinois is triggered when "selling" occurs in a jurisdiction imposing a tax. The Department's opinion is that the most important element of selling is the seller's acceptance of the purchase order. Consequently, if a purchase order is accepted in a jurisdiction that imposes a local tax, that tax will be incurred. See 86 Ill. Adm. Code 270.115(b), enclosed. The tax rate is fixed by the location of the seller, not the delivery location. The fact that the item being sold is shipped from out-of-State or from another Illinois location is immaterial for purposes of local taxes if the sale occurs through order acceptance in an Illinois jurisdiction imposing a local tax. For these transactions, the local tax will be incurred.

If a purchase order is accepted outside the State of Illinois, but the property being sold is located in an Illinois jurisdiction that has imposed a local tax (see, for example, Section 270.115(b)(3)), then the location of the property at the time of sale will determine where the seller is engaged in business for the purpose of determining the imposition of applicable local sales taxes.

When tangible personal property is located in this State at the time of its sale (or is subsequently produced in this State) and then is delivered in this State to purchasers, the gross receipts from such sales are subject to tax if the sales are at retail. See Section 130.605. However, subsection (b) provides that gross receipts are not subject to tax when the gross receipts are from sales in which sellers are obligated, under the terms of their agreements with the purchasers, to make physical delivery of the property from a point in this State to a point outside this State, not to be returned to this State, provided that such delivery is actually made. In addition, subsection (c) provides that gross receipts are not subject to tax when the gross receipts are from sales in which

May 6, 1999

the sellers, by carriers (when the carriers are not also the purchasers) or by mail, under the terms of their agreements with the purchasers, deliver the goods from a point in this State to a point outside this State, not to be returned to this State, provided that such delivery is actually made.

Please note that sales are taxable even though purchasers that receive physical possession of the property in this State transport or send the property out of this State for use outside the State or for use in the conduct of interstate commerce. See Section 130.605(a)(2). The Department considers common carriers that are contracted for by purchasers to be representatives of those purchasers. If those common carriers receive physical possession of the property in this State, the sales of such property are subject to tax.

I hope this information is helpful. The Department of Revenue maintains a Web site, which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of the enclosed copy of Section 1200.110(b).

Very truly yours,

Gina Roccaforte
Associate Counsel

GR:msk

Enc.